

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0579P**

**Sales & Use Tax**

**Calendar Years 1996, 1997, & 1998**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

**STATEMENT OF FACTS**

The negligence penalty was assessed on an use tax assessment resulting from a Department audit for the calendar years 1996, 1997, & 1998.

The taxpayer is in the business of trucking and excavating. The taxpayer hauls stone and gravel for anyone. The taxpayer does some excavating work for developers. The taxpayer has seven employees and seven vehicles.

I. **Tax Administration** - Penalty.

**DISCUSSION**

The taxpayer was assessed use tax for the purchase of construction equipment used in excavating and other types of construction services. The taxpayer argues the penalty should be waived as the taxpayer was unaware excavating and the other construction type services were taxable operations.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the

Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

As the taxpayer was ignorant of listed tax laws, and ignorance is subject to the negligence penalty, the Department finds the negligence penalty proper and denies the penalty protest.

**FINDING**

The taxpayer’s protest is denied.

TB/RAW/JMS 001802